

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Chicago, Illinois,
Petitioner,

Vs.

The Burlington Northern and Santa Fe Railway Company and the
State of Illinois, Department of Transportation,
Respondents

T02-0111

Petition for authorization to reconstruct the South Canal Street Viaduct
over the tracks of The Burlington Northern and Santa Fe Railway in the
City of Chicago, County of Cook and State of Illinois, and for a waiver of
the clearance requirements of 92 Ill. Admin. Code, Section 1500.

ORDER

By the Commission:

On November 12, 2002, the City of Chicago, Cook County, Illinois, a municipal corporation ("Petitioner" or "City") filed the above-captioned verified petition naming as Respondents The Burlington Northern and Santa Fe Railway Company ("the Railway") and the Department of Transportation of the State of Illinois ("IDOT").

Pursuant to notice, this matter came on before a duly authorized Administrative Law Judge of the Illinois Commerce Commission ("Commission") at the offices of the Commission in Chicago, Illinois on January 29 and February 18, 2003. Appearances were entered by counsel for the City and The Burlington Northern and Santa Fe Railway Company. Henry C. Humphries, Railroad Safety Specialist of the Railroad Section, Transportation Bureau of the Commission also entered an appearance. At the conclusion of the hearing on the aforementioned latter date, the record was marked "Heard and Taken."

The City presented as its witness, Diane Marie Campione, project manager and licensed structural engineer at Alfred Benesch & Co., a consulting engineering firm.

In summary, South Canal Street is an urban collector street in the City which runs in a north-south direction and is a primary mover of vehicular and pedestrian traffic to and from downtown Chicago. The South Canal Street viaduct is an overhead structure spanning numerous railroad tracks of the Railway. The City wishes to reconstruct the South Canal Street viaduct because the viaduct has seriously deteriorated since its construction in 1929-30. It has

never undergone reconstruction. The project began with preliminary engineering in 1995-96. The project is now in its second phase – construction plans.

The existing viaduct is supported by six piers and two abutments with clearances ranging from 16.80 feet to 20.36 feet. The existing horizontal clearances of the viaduct from face of structure element to centerline of the nearest track range from 8.00 feet to 12.83 feet. The reconstructed viaduct will be supported by six new pier structures built upon the existing caissons and the north and south abutments will be reused with modifications to the top portion to accommodate the new superstructure and approach slabs. The proposed vertical clearances will range from 18.11 feet to 22.67 feet. The horizontal clearances of the reconstructed viaduct from face of structure element to the centerline of the nearest track will range from 8.00 feet to 12.17 feet.

The reconstructed viaduct must maintain a profile similar to the existing one between Pier A and the north abutment in order to maintain the existing vertical clearance on Canal Street where the St. Charles Airline Bridge crosses over the viaduct and to maintain access to adjacent buildings. Pier place was dictated by the re-use of the existing caissons to support the new superstructure.

Average daily traffic ("ADT") on Canal Street is 28,000. The projected ADT for 2020 is 34,720. Railway tracks will not be put out of service. Completion is expected in early 2004.

No funding is requested or forthcoming from the Railway or the Grade Crossing Protection Fund of the Motor Fuel Tax Law. Funding has been secured from the Federal Surface Transportation Program Fund.

The Commission, having given due consideration to the petition and the record herein, and being fully advised in the premises, is of the opinion and finds that:

- (1) the City of Chicago is a municipal corporation within the State of Illinois;
- (2) The Burlington Northern and Santa Fe Railway Company is a corporation engaged in the transportation of property and/or passengers for-hire and as such is a "rail carrier" as defined in Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (3) the Department of Transportation of the State of Illinois is a department of the State of Illinois which exists by virtue of the laws of the State of Illinois;

- (4) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (5) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (6) public convenience and necessity require the reconstruction of the South Canal Street viaduct in the City of Chicago, County of Cook, State of Illinois;
- (7) the parties are required and directed to proceed immediately in performing the work herein required of them and shall complete these improvements within twelve (12) months of the date of this Order;
- (8) forms for concrete being poured for the new piers during construction will create less than eight feet (8') horizontal clearances and for three to seven days will impact four of the Railway's tracks (tracks A, E, F, and G) on a temporary basis and will impact three of nine of the Railway's tracks; a flag person is required to warn city construction employees of approaching trains during this period of reduced clearance; waiver of the requirements of 92 Illinois Administrative Code ("I.A.C."), Section 1500 should be granted for this temporary reduced clearance; existing horizontal clearances meet the requirements of 92 I.A.C. 1500 and the proposed horizontal clearances will exceed the existing clearances;
- (9) existing vertical clearances do not meet the requirements of 92 I.A.C. 1500; proposed vertical clearances will be an improvement but also will not meet the requirements of 92 I.A.C. 1500; waiver of the requirements of 92 I.A.C., Section 1500 should be granted for permanent reduced vertical clearance;
- (10) the aforementioned waiver is granted on the condition that warning signs on or about the reduced clearances shall be installed and maintained by the Railway, at City expense, in a conspicuous location at the approach along the tracks to the area containing the reduced clearances and that said signs shall either be hood lighted or flood lighted so as to be clearly visible during the hours of darkness; a bulletin should be issued by the Railway to its employees advising of the close clearance, location, and duration; a copy of the bulletin should be sent to the Commission's Transportation Bureau, Railroad Section within five (5) days of the date of issuance;

- (11) during the construction and when the structure is complete, no clearances may be reduced beyond the clearances contained in Petitioner's Exhibit 3, admitted into evidence in this proceeding;
- (12) the City and the Railway shall have weekly meetings for coordinating the projected temporary clearances unless it is mutually agreed not to have a meeting to discuss the temporarily reduced clearances;
- (13) costs for the project will be the sole responsibility of the City which has secured funds from the Federal Surface Transportation Program Fund; no funds are requested or forthcoming from the Railway or the Grade Crossing Protection Fund of the Motor Fuel Tax Law;
- (14) completion of the project is expected within twelve (12) months of the date of this Order;
- (15) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law requires each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that permission be, and it is hereby granted to the City of Chicago, Illinois, County of Cook, State of Illinois to reconstruct the South Canal Street viaduct.

IT IS FURTHER ORDERED that the cost of the reconstruction project be, and the same is hereby, to be borne entirely by the City of Chicago.

IT IS FURTHER ORDERED that the provisions of 92 Illinois Administrative Code, Section 1500 are waived for temporary horizontal clearances and permanent vertical clearances. Existing horizontal clearances meet the requirements of 92 I.A.C. 1500 and the proposed horizontal clearances will exceed the existing clearances.

IT IS FURTHER ORDERED that temporary reduced horizontal clearances require a flagman, retained at the expense of the City, to warn City employees of train movements. The aforementioned waiver is granted on the condition that warning signs on or about the reduced clearances shall be installed and

maintained by the Railway at City expense, in a conspicuous location at the approach along the tracks to the area containing the reduced clearances and that said signs shall either be hood lighted or flood lighted so as to be clearly visible during the hours of darkness. A bulletin should be issued by the Railway to its employees advising of the close clearance, location, and duration. A copy of the bulletin should be sent to the Commission's Transportation Bureau, Railroad Section within five (5) days of the date of issuance.

IT IS FURTHER ORDERED that the proposed vertical clearances will be an improvement but also will not meet the requirements of 92 I.A.C. 1500; therefore, waiver of the requirements of 92 I.A.C., Section 1500 should be granted for permanent reduced vertical clearance;

IT IS FURTHER ORDERED that the City and the Railway shall have weekly meetings for coordinating the projected temporary clearances unless it is mutually agreed not to have a meeting to discuss the temporarily reduced clearances.

IT IS FURTHER ORDERED that during construction and when the structure is complete, no clearances may be reduced beyond the clearances contained in Petitioner's Exhibit 3, admitted into evidence in this proceeding.

IT IS FURTHER ORDERED that the City shall file written reports with the Transportation Bureau, Director of Processing and Information within fifteen (15) days of the conclusion of each calendar quarter, stating the percentage of completion of the project. If the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement and project manager information (the name, title, mailing address, telephone number, facsimile number) of the employee responsible for management of the project.

IT IS FURTHER ORDERED that the work herein approved shall be completed on or before twelve months from the date of this Order.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

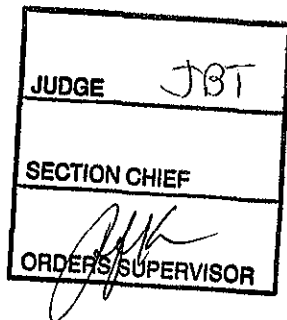
IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this 23rd day of April 2003.



Edward C. Husley ₂

Chairman